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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,409	02/21/2002	Francine Baldo	219928US0	5630
22850	7590	01/28/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			YU, GINA C	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/078,409

Applicant(s)

BALDO ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Receipt is acknowledged of Amendment filed on November 3, 2003. Claims 1-42 are pending. Claim rejections made under 35 U.S.C. § 103 (a) as indicated in the previous Office action dated July 3, 2003 are withdrawn and modified to meet the newly added claims.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-5, 9, 14-17, 20, 23-27, 31, 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breton et al. (US 6124364) ("Breton").

Breton teaches aging skin treatment formulations comprising resveratrol (3,4',5-trihydroxystilbene) and polyols such as butylenes glycol or glycerin. See Example 2. See instant claims 1-3, 5, 6, 9, 14, 20, 23-25, 27, 28, 31, 36, and 40. The reference also teaches the hydroxystilbenes of instant claims 2 and 24. See col. 4, lines 6 – 30. The reference teaches that the amount of hydroxystilbenes can range from 0.001-10 % by weight, and that the amount depends on the desired effect. See col. 4, lines 36 – 40. The polyols of the example formulations range from 1-7 % by weight. The reference also teaches the oily phase of instant claims 14, 15, 36, and 37. See col. 4, line 56 – col. 5, line 18. The additives are taught in col. 5, lines 51 – 65.

While the weight ratio of the polyol and resveratrol in the example formulations differs from the recited limitation of the instant claims, examiner notes that, generally, differences in concentration will not support the patentability of subject matter

encompassed by the prior art unless there is evidence indicating such concentration is critical. See MPEP § 2144.05. Since the general conditions of the instant claims are disclosed in Breton, examiner views that one having ordinary skill in the art would have discovered the optimum or workable ranges by routine experimentation. It would have been obvious to a skilled artisan that lowering the concentration of an active component would be economically advantageous and/or meet the consumer demand for less effective yet cheaper products.

2. Claims 6, 10-13, 18, 19, 21, 22, 28, 32-35, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breton as applied to claims 1-5, 9, 14-17, 20, 23-27, 31, 36-40 above, and further in view of Ribier et al. (US 5658575) ("Ribier").

Breton, discussed above, fails to teach the lamellar liquid crystal emulsion composition and the method of making thereof. While the reference teaches adding vitamins, the reference does not particularly mention using a retinoid. See col. 5, lines 51 – 63.

Ribier teaches cosmetic compositions comprising an oil-in-water emulsion containing nano-scale oily globules coated with lamellar liquid crystal are dispersed in an aqueous phase. See abstract. The reference suggests adding cosmetic actives such as antioxidants, anti-ageing agents, and phytanetriol. See col. 4, lines 28 – 51. The reference teaches the method of making the composition, and teaches that the aqueous phase of the composition comprises an active agent in a dissolved state. See col. 1, lines 51 – 60; col. 4, lines 19 – 51; col. 6, lines 1 – 16; instant claims 18 and 19. The reference teaches that the nanoemulsion of the invention exhibits good skin

penetration when applied topically. See col. 2, lines 36 – 60. See instant claims 10-13 and 32-35. The reference also teaches using retinol palmitate (Vitamin A) in night skin care composition and day cream. See Examples 6 and 16; instant claims 21, 22, 41, and 42.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the resveratrol composition of Breton by incorporating the actives in the nanoemulsion as motivated by Ribier, because of an expectation of successfully producing an anti-aging cosmetic composition with good penetration of the active ingredients. The addition of old and well-known vitamins such as retinoids would have been also obvious to the skilled artisan because of the expectation of successfully producing an enhanced skin care effects.

3. Claims 1-9, 14-17, 20-31, 36-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Pillai et al. (US 6358517 B1) ("Pillai").

Pillai teaches a non-aqueous topical composition comprising resveratrol (3,4',5-trihydroxystilbene), 2 % of ethanol, and retinoids. See Example 9. See instant claims 7, 8, 21, 22, 29, 30, 41, and 42. The reference teaches that emollients such as polyols, are used in the amount ranging from 0.5-50% by weight. See col. 3, lines 57 – 63. See instant claim 1. The reference particularly teaches using polyethylene glycol and butylenes glycol as emollients and penetration enhancers, respectively. See col. 4, lines 8 – 18; instant claims 5, 6, 27, 28. The reference teaches using 0.00001 – 10 % by weight of resveratrol. See col. 2, lines 16-64.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Pillai by adding the polyols as motivated by the reference because of an expectation of successfully producing a non-aqueous topical composition with enhanced moisturization and/or penetration.

***Response to Arguments***

Applicant's arguments filed November 3, 2003 have been fully considered but they are not persuasive.

While applicants assert that the prior arts Breton and Pillai fail to teach the polyol: hydroxystilbene ratio of the instant invention, examiner respectfully disagrees. While the specifically illustrated formulations of the prior art teach employ less amount of polyol than the applicants' invention, the reference in fact teaches that the weight range of the polyols and stilbene which meet the instant claims as indicated in the rejections. For example, Breton teaches using 1-7% of polyols and 0.001-10 % of hydroxystilbenes. Employing 7 % of polyols and 0.047 % of hydroxystilbene would have been obvious to the routineer in view of the prior art. Similarly, Pillai teaches using 0.5-50 % of emollient, such as a polyol, and 0.00001 – 10 % by weight of resveratrol. It would have been obvious to the routineer to use, for example, 50 % of glycols and 0.33% of resveratrol in a composition. The rejections are viewed proper in absence of unexpected or surprising result of otherwise obvious combination of the prior arts.

***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu  
Patent Examiner  
January 16, 2004



**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**

1/23/04